App. F. IX-4

Previous References

1935
(Law)

File No. 123-35
Serial Nos. 1-2

PRESERVED

Letter References.

Preserve

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 2

(10)

Part B for March 36

SUBJECT.

Legal opinion re attachment of Govt. Savings Bank deposits towards land revenue arrears.

2 To the Comptroller
No. p6385 dy 26 3-36

WD 03607—GPB—22,500—2-8-35

Forward copy of his opinion of the Govt. Advocate in the matter and requests to take further action accordingly

[illegible]

3496/P

General and Revenue Secretariat Law File No. 123 of 1935 [App. F. III—2

Serial No.

From the comptr to Govt
Letter No. 276 dt 9-12-35
Forwards the connected papers in which the Deputy commissioner Tumkur dt has requested the Dy commr Chitaldrug Dt to attach the amount in the Savings Bank Account of one mr C. Abdul Jabbar - deceased - for adjustment towards land revenue in the suit and solicits legal opinion
The points on which legal opinion is required are enumerated (as 1 to 4) in paras 1, 2 & 3 of the P.W.D.
The A. G. may perhaps be requested to furnish his opinion on the points
Rdbs
Ld
11/12/35

The relationship between a depositor & the Bank is that of a creditor & debtor (Foley vs Hill). The money due to the depositor is therefore an actionable claim or debt. Under the Land Revenue Code, a debt cannot be attached for arrears of revenue as it is not ~~debt~~ property which can

NOTE—Contn Sheet.

WD 03594—GPB—30,000—13-7-35

3456/7

File No. of 193 | General and Revenue Secretariat

be distrained. This disposes of all the questions raised by the Comptroller, Guernsey) MG 14/12

Please consult G.A. also MG 20/12

GENERAL SECRETARIAT 16 DEC 1935 648

G.O. No. p 10635 dated 20/12/35. Fin. 583/35-36 & 20/12/35.

P.S. Forwarded with compliments to the Govt advocate MG Posted 20/12

Returned with compliments. No. Jur. 133/35-36 & 9.3.36

This file raises a question of some nicety.

Sections 156 and 160 of the Land Revenue Code authorise the recovery of land revenue by 'distress and sale' of the defaulter's 'moveables', which expression would include a debt, or money in deposit, as in this case.

It may be noticed that according to English Law, it is only goods and chattels that could be distrained for rent by a land-lord. The expression used in our Code is 'Moveables' which is more general in its scope. The essence of distraint, ordinarily, is the act of taking out of the possession of the real owner as laid down in I. L. R. 50 Madras, 329.

GENERAL SECRETARIAT 10 MAR 1936

But, in the present case, the right is not the ordinary Common Law Right of the land-lord to distrain for rent, but is a Statutory right which seems to confer a wider power on the Government. In Halsbury's

Laws

Serial No.

Laws of England, Vol. 11, page 545, the following observations are found:-

> 'The right of distress in respect of rates and taxes stands in many respects upon a footing different to the rights previously considered. It does not arise under the Common Law or by virtue of contract. It is purely statutory. In its nature it is somewhat analogous to an execution levied to enforce a legal money liability'

Again at page 553 it is observed that under a statutory right 'money as well as goods has been held to be capable of distress. According to the case reported in 90 English Reports, page 516, even debts seem to be liable to be distrained, though the facts of the case are not very clear from the report. A different view, however is expressed in Joglekar's Land Revenue Code (1919 Edn.) at page 468, where the learned author, while conceding that property of the defaulter in the custody of a public officer or even a Court could be distrained, is of opinion that it must be by actual seizure. Why there can be no distraint without actual physical seizure when the public officer or Court is willing to hold the property at the ddsposal of the distraining officer is difficult to follow. Though the question may not be thus altogether free from doubt, I am inclined to the view that the Government dues could be recovered from the amount in deposit under the powers conferred by the Code. It seems to be however, unnecessary to consider further this difficult question as in this case, the Government hold the defaulter's money who himself owes Land Revenue dues to Government. According to the ordinary rights existing between creditors and debtors, the Government may,

NOTE.—Contn. Sheet.

WD 03594—GPB—30,000—13-7-35

3496

Law File No. 173 of 1935. General and Revenue Secretariat

...may, I think, deduct out of the amount payable to the defaulter what he owes to the Government and refund only the balance. Even if the defaulter's heirs contest it and sue for the recovery of the deposit, I think a plea of set-off will be available to the Government. I, therefore, think that the request of the Deputy-Commissioner of Tumkur may be complied with.

N. Narayana Iyer
Government Advocate.

H/9.3.1936.

The general questions raised by the Comptroller in his letter of 9th Dec^r cannot be definitely answered in view of the above opinion of the Govt advocate. The advice he gives however regarding the particular case raised by the DC Tumkur may be accepted and the Comptroller intimated accordingly.

(Illegible)
Yes 10/3
Mo
11/3

Draft
MR
11/3

Dft. pmc

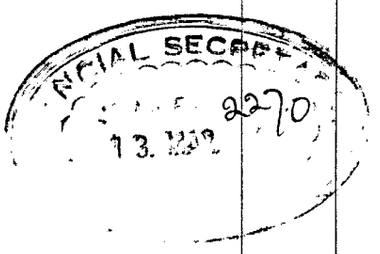
ISD
11/3

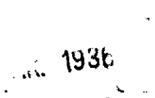
Reg
10/3

GENERAL SECRETARIAT
11 MAR 1936
283

(5)

Serial No.





B
27/7/36

For perusal before issue
Fin Secy)
DOP 12/3

Issue
DOP 17/3

To,

The Comptroller
no. P. 6355 dt. 26/3/36 forwarding a
Cop of ltr G. 884 thereon.

WD 03594—GPB—30,000—13-7-35

3496 P 35

In reply please quote reference
No. S.B.No.276

Ex mepile.

OFFICE OF THE COMPTROLLER TO THE GOVERNMENT
OF HIS HIGHNESS THE MAHARAJA OF MYSORE,

Bangalore, dated 9th December *193* 5.

Law 123-35-1

FROM

A. N. RAGHAVACHAR, ESQ., M.A.,
Comptroller to the Government of
His Highness the Maharaja of Mysore,
Bangalore.

GENERAL SECRETARY
1935
Law

TO

M. Venkatesa Iyengar Esq., M.A.,
General Secretary to the Government of Mysore
Bangalore

SIR,

I have the honor to request you to be good enough to favour me with your opinion on the following aspects:-

Rule 34(1) and 74(5) of the Mysore Savings Bank Rules empower competent Civil and Criminal Courts in Mysore to attach and withdraw amounts from the accounts of depositors in Savings Bank. (1) Does the expression "Court" used here include a "Revenue Officer" who under the provisions of the Mysore Land Revenue Code, constitutes a Court for purposes of enforcing recovery of land revenue dues.

2. Does the term moveable property used in the Land Revenue Code, include deposits in Government Savings Bank or Funds in the custody of or due from others.

3. If the reply to this point is in the affirmative, can Revenue Officers attach and appropriate Savings Bank deposits towards land revenue dues? (4) Does it make any difference if instead of the money being in Government Savings Bank, it was in the Postal Savings Bank.

The above doubts have arisen in connection with an order of the Deputy Commissioner, Tumkur District, attaching certain amounts of a depositor in Savings Bank Deposit in Chitaldrug District towards land revenue arrears, the papers connected with which

(7

will be found in the enclosed file.

I have the honor to be,
Sir,
Your most obedient servant,

A. S. Upshaw

Comptroller

CV

Appendix F G—1]

SUBJECT.....

.....

.....

(3)

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *193* .

Date of issue 26.2.36

Signed by Hrs N.R.J.

Section Law

File No. 123-35

Serial No. V

No. F/6385(Sne 198 Lands)

To The Comptroller

Sir,

With reference to your lens no. S.B. no. 276 d 9.12.35 soliciting legal opinion ~~in the matter~~ re: attachment of Govt. savings Bank deposits towards land revenue arrears, I am directed to forward herewith a Copy of the Govt. Adv's opinion in the matter, and to ~~request~~ ~~that~~ ~~necessary~~ ~~orders~~ be ~~issued~~ ~~for~~ further action be taken accordingly.

The enclosures to your lens are herewith returned

I have etc

for Govt Secy

BD

17/3

Tumpa

State that the General Questions raised in your letter have not been definitely answered in the above opinion. The advice given regarding Tumpa in the matter of the savings bank deposit of Mr Abdul Jabbar may be accepted.

List of enclosures.....

Copied by.....

Examined by.....

WD 03601—GPB—30,000—23-9-35

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P 6385 Law 123-35-2
Suc (9 Sheets)

Dated, Bangalore, 26.3. *193*6

From

M. Venkatesa Iyengar, Esquire, M.A.,
Secretary to the Government of His Highness the Maharaja of Mysore.
General Department

To

A.N. Raghavachar, Esquire, M.A.,
Comptroller to Government, Bangalore.

Sir,

With reference to your letter No. S.B. 276 dated the 9th December 1935 soliciting legal opinion re- attachment of Government Savings Bank deposits towards land revenue arrears, I am directed to forward herewith a copy of the Government Advocate's opinion in the matter, and to state that though the general questions raised in your letter have not been definitely answered in the said opinion, the advice given regarding the request of the Deputy Commissioner, Tumkur in the matter of the Savings Bank deposit of one late Mr. Abdul Jabbar may be accepted and further action be taken accordingly.

The enclosures to your letter are herewith returned.

I have the honor to be,
S i r,
Your most obedient servant,

for General Secretary to Government.

P.H.